

acquisition specialist in the headquarters acquisition staff office. In addition, contracting activities should designate similar officials within their principal components to the extent practicable and feasible. A copy of each appointment and termination of appointment of protest control officers shall be forwarded to the Director, OAGM.

[50 FR 23133, May 31, 1985, as amended at 54 FR 24344, June 7, 1989; 56 FR 47003, Sept. 17, 1991]

333.103 Protests to the agency.

(a)(2) The contracting officer is authorized to make the determination, using the criteria in FAR 33.103(a), to award a contract notwithstanding the protest after obtaining the concurrence of the contracting activity's protest control officer and OGC-BAL. If the protest has been lodged with the Secretary, is addressed to the Secretary, or requests referral to the Secretary, approval shall also be obtained from the Director, OAGM before making the award.

(3) The contracting officer shall require written confirmation of any oral protest. To be considered timely, the written confirmation must be filed in accordance with the applicable provisions in 333.102(a). In the following cases, written protests received by the contracting officer before award shall be forwarded, through acquisition channels, to the DPCO for processing. Files concerning these protests shall be submitted, in duplicate, by the most expeditious means, marked "IMMEDIATE ACTION—PROTEST BEFORE AWARD", and contain the documentation referenced in 333.104(a)(3).

(i) The protestant requests referral to the Secretary of Health and Human Services;

(ii) The protest is known to have been lodged with the Comptroller General or the Secretary, or is addressed to either; or

(iii) The contracting officer entertains some doubt as to the proper action regarding the protest or believes it to be in the best interest of the Government that the protest be considered by the Secretary or the Comptroller General.

Otherwise, submissions of protests to the DPCO may be dispensed with by the contracting officer if he/she is reasonably satisfied that the protest is groundless. In this instance, the contracting officer, with the concurrence of the contracting activity's protest control officer and OGC-BAL, may disallow the protest.

(4) Protests received after award shall be treated as indicated in 333.103(a)(3), above; however, if the files are to be submitted to the DPCO for action, they shall be marked "IMMEDIATE ACTION—PROTEST AFTER AWARD".

[50 FR 23133, May 31, 1985, as amended at 54 FR 24344, June 7, 1989; 56 FR 47003, Sept. 17, 1991; 57 FR 35473, Aug. 10, 1992]

333.104 Protests to GAO.

(a) *General.* (1) A protestor shall be required to furnish a copy of its complete protest to the contracting officer no later than the first working day after the protest is filed with GAO. Immediately upon receiving a copy of the complete protest, the contracting officer shall telephonically notify the contracting activity's protest control officer, who, in turn, shall immediately notify the DPCO. The contracting officer shall provide the name of the protestor, the solicitation number, the date and time the protest was received from the protestor, and any other significant information.

(3) Protests lodged with GAO, whether before or after award, shall be processed by the DPCO. Protest files shall be prepared by the contracting office and distributed as follows: two copies to the DPCO, one copy to the contracting activity's protest control officer, and one copy to OGC-BAL. Files shall include the following documentation:

(i) The contracting officer's statement of facts and circumstances, including a discussion of the merits of the protest, and conclusions and recommendations, including documentary evidence on which they are based.

(ii) A copy of the IFB or RFP.

(iii) A copy of the abstract of bids or proposals.

(iv) A copy of the bid or proposal of the successful offeror to whom award has been made or is proposed to be made.

(v) A copy of the bid or proposal of the protestant, if any.

(vi) The current status of award. When award has been made, this shall include whether performance has commenced, shipment or delivery has been made, or a stop work order has been issued.

(vii) A copy of any mutual agreement to suspend work on a no-cost basis, when appropriate (see FAR 33.104(c)(4)).

(viii) Copies of the notice of protest given offerors and other parties when the notice is appropriate (see FAR 33.104(a)(4)).

(ix) A copy of the technical evaluation report required by 315.608-76, when applicable, and a copy of each evaluator's rating for all proposals.

(x) A copy of the negotiation memorandum, when applicable (see 315.672).

(xi) The name and telephone number of the person in the contracting office who may be contacted for information relevant to the protest, and

(xii) Any document which is referred to in the contracting officer's statement of facts.

The files shall be assembled in an orderly manner and shall include an index of enclosures.

(4) The contracting officer is responsible for making the necessary notifications referenced in FAR 33.104(a)(4). Copies of the views of interested parties submitted in response to the notifications shall be immediately provided to the DPCO upon receipt by the contracting officer.

(5) The contracting officer shall furnish the protest file containing the documentation specified in 333.104(a)(3), except item (i), to the DPCO within twelve (12) work days from receipt of the protest. The contracting officer shall provide the documentation required by item (i) of 333.104(a)(3) to the DPCO within nineteen (19) work days from receipt of the protest. (The contracting activity's protest control officer may provide a written opinion and recommendation on the protest to the DPCO within nineteen (19) work days from receipt of the protest by the contracting officer.) The contracting officer shall clearly identify any documents or portions of documents he or she desires to withhold from the protester, and shall in-

clude justification for the withholding of each document or portion of a document in the contracting officer's statement of facts. Since the statute allows only a short time period in which to respond to protests lodged with GAO, the contracting officer shall handle each protest on a priority basis.

The DPCO shall prepare the report and submit it and the protest file to GAO in accordance with FAR 33.104(a)(5).

(6)(i) The DPCO shall take the necessary actions specified in FAR 33.104(a)(6)(i) after receiving all the documentation required by 333.104(a)(3) from the contracting officer.

(ii) Since the DPCO will furnish the report to GAO, the protestor, and other interested parties, comments on the report from the protester and other interested parties will be requested to be sent to the DPCO.

(7) The Office of Acquisition and Grants Management (OAGM) has been designated as the headquarters office, and the DPCO as the individual, that GAO should contact concerning all protests lodged with GAO.

(b) *Protests before award.* (1) To make an award notwithstanding a protest, the contracting officer shall prepare a finding using the criteria in FAR 33.104(b)(1), have it executed by the principal official responsible for acquisition (PORA), and forward it, along with a written request for approval to make the award, to the Director, OAGM.

(2) If the request to make an award notwithstanding the protest is approved by the Director, OAGM, the DPCO shall notify GAO. Whether the request is approved or not, the DPCO shall telephonically notify the contracting activity's protest control officer of the decision by the Director, OAGM, and the contracting activity's protest control officer shall immediately notify the contracting officer. The DPCO shall confirm the decision by memorandum to the contracting activity's protest control officer.

(4) The contracting office shall prepare the protest file in accordance with 333.104(a)(2), and forward it, in duplicate, to the DPCO (see 333.104(a)(4)). The file shall be marked "IMMEDIATE

ACTION—PROTEST BEFORE AWARD.”

(c) *Protests after award.* (2) If the contracting officer believes performance should be allowed to continue notwithstanding the protest, a finding shall be prepared by the contracting officer, executed by the PORA, and forwarded, along with a written request for approval, to the Director, OAGM. The same procedures for notification stated in 333.104(b)(2), above shall be followed.

(6) The contracting officer shall prepare the protest file in accordance with 333.104(a)(3), and forward it, in duplicate, to the DPCO (see 333.104(a)(5)). The file shall be marked “IMMEDIATE ACTION—PROTEST AFTER AWARD.”

(d) *Findings and notice.* The contracting officer shall perform the actions required by FAR 33.104(d); however, notification to GAO shall be made by the DPCO.

(g) *Notice to GAO.* The Director, Office of Acquisition and Grants Management shall be the official to comply with the requirements of FAR 33.104(g).

(i) *Express option.* When GAO invokes the express option, the contracting officer shall prepare the complete protest file as described in 333.104(a)(3), to include item (i), and deliver it (hand-carry, if necessary) to the DPCO no later than the close of business on the ninth work day after the express option is invoked. The contracting officer shall involve OGC-BAL as early as possible after receiving notification of the invocation of the express option, and obtain the concurrence of the cognizant OGC-BAL attorney prior to transmitting the protest file to the DPCO. The DPCO shall prepare the report and submit it and the protest file to GAO.

[50 FR 23133, May 31, 1985, as amended at 50 FR 38004, Sept. 19, 1985; 54 FR 24344, June 7, 1989; 55 FR 42197, Oct. 18, 1990; 56 FR 47003, Sept. 17, 1991]

333.105 Protests to GSBGA.

(a)(1) The contracting officer shall give telephone notification to the DPCO, OGC-BAL, and the contracting activity's protest control officer immediately upon notification of the protest.

(2)(i) The contracting officer is responsible for complying with the requirement in FAR 33.105(a)(2)(i).

(ii) The cognizant OGC-BAL attorney is responsible for complying with the requirement stated in FAR 33.105(a)(2)(ii).

(b) As soon as possible but no later than six (6) work days after the filing of the protest, a copy of the protest file containing *all* documents (see FAR 33.105(b), especially (b)(7)), and labeled on the cover “FOR USE BY DPCO ONLY”, shall be in the hands of the DPCO for review. Simultaneously, two copies of the same protest file provided to the DPCO shall be provided to the cognizant OGC-BAL attorney. These two copies shall be labeled on the cover “FOR USE BY OGC-BAL.” After consultation with the cognizant OGC-BAL attorney, the DPCO shall transmit the protest file to the GSBGA.

(1) Rather than furnishing a decision, the contracting officer shall include a statement of facts and circumstances and a discussion of the merits of the protest, as well as conclusions and recommendations and documentary evidence on which they are based. These statements shall be reviewed by the cognizant OGC-BAL attorney before being finalized.

(7) The DPCO shall provide all parties with a list of documents furnished to the GSBGA for *in camera* review.

(10) The copies of the protest files to be provided to the DPCO and OGC-BAL shall also contain the documents or information specified in 333.104(a)(3)(vii) through (xii). The file shall be assembled in an orderly manner and include an index of enclosures.

(c) The cognizant OGC-BAL attorney is responsible for complying with the requirement stated in FAR 33.105(c).

(d)(1) If the protest requests a suspension of acquisition authority, the contracting officer must make this known to the DPCO, OGC-BAL, and the contracting activity's protest control officer at the time of the initial telephone notification of the filing of the protest to afford an opportunity for the DPCO, OGC-BAL, principal official responsible for acquisition (PORA), and contracting officer to take appropriate action.